

OUT OF THE GARDEN OF EDEN:

MOVING BEYOND THE RIGHTS-BASED AGENDA IN THE URBAN SECTOR

by Benjamin Bradlow*

INTRODUCTION

The cities of the global South are the harbingers of a new age. For the first time in history, more than half of humanity lives in cities.¹ One billion people live in slums.² The vast majority of this billion is living in “informal” arrangements.³ This means living without legally recognized land tenure, housing, social relationships, and economic livelihoods.⁴

Evictions and demolitions spring from this informality. Recourse to legal protection is difficult for slum dwellers, since formal actors such as the State can, and often do, exploit this divide. As land in urban settings becomes scarcer,⁵ the temptation for both public and private landowners to evict ordinary poor people increases. Watchdogs and legal assistance organizations have sprung up in multitudes to support slum dwellers to fight evictions.⁶ They fight for the rights of slum dwellers to have adequate shelter, basic services, and other socio-economic benefits. In countries such as South Africa, where the Constitution contains extensive socio-economic rights, a series of court cases in the past decade has developed a method of defending the rights of slum dwellers by focusing on the role of the State.⁷ The emerging jurisprudence has been geared primarily towards compelling the State to deliver entitlements.⁸

But there are real limitations to the uses of socio-economic rights as a language and framework for development. Does enshrining the right to housing, water, health, electricity, and other necessities, assume that the governments bound by these obligations will suddenly be able to fulfill them? Few would make such a self-evidently naïve case. Still, especially in the urban sector, the rights-based framework predominates.⁹

This paper will make three related arguments. First, legal and advocacy methods that hold governments accountable with respect to their socio-economic rights obligations have continuing relevance. But such an approach has limited value in structuring mechanisms by which to actually deliver entitlements. Secondly, organizations such as Shack / Slum Dwellers International (“SDI”) are developing methodologies that move beyond a rights-based agenda that reacts to the denial of entitlements, to implement proactive, sustainable alternative solutions to evictions, and to thereby build the foundations for participatory, inclusive cities. In fact, the basic legal and institutional framework produced by the rights-based approach has been a prerequisite for opening the space for the alternatives that groups like SDI work on. Finally, there is common ground among these approaches that can serve as a basis for increased coherence of purpose and effort among civil society actors. In practice, this means supporting people-centered processes to address the large

problems of urban human settlements worldwide in increasingly more sustainable and scalable ways.

THE LIMITATIONS OF A RIGHTS-BASED MODEL

The primary limitation of a rights-based agenda is that its methodology enforces professional control, with special emphasis on that accruing to lawyers and judges. If the struggles against forced eviction, and for basic services and shelter—the primary sites of socio-economic contestation in the urban setting—are to take place in the courts, then lawyers inevitably become the interlocutors of the poor. This is true regardless of whether the rights-based agenda is articulated by NGOs, community-based social movements, or lawyers themselves.

Often lawyers’ involvement is necessary. The work that the Center for Housing Rights and Evictions (“COHRE”), various UN agencies, other watchdogs, and legal aid organizations do is indispensable for keeping governments accountable to their citizens. It is a humanitarian necessity to defend the poor against State and private sector attempts to deny rights to housing and basic services in urban areas. Many of these groups perform key practical functions such as strategic litigation, advocacy, and documentation of the ways in which governments throughout the world exclude the urban poor and perpetrate acts of physical, social, and economic violence. Housing and land evictions are all too common in an age where urban human settlements are clearly the way of the future. Because of the pioneering work that these groups have done there is space to explore alternatives to evictions and demolitions.

SHACK/SLUM DWELLERS INTERNATIONAL: AN ALTERNATIVE APPROACH

SDI is an alliance of community-based organizations of the urban poor in thirty-three countries in Africa, Asia, and Latin America.¹⁰ These groups use methodologies that spring from the most fundamental aspects of informal life. Accordingly, all SDI-affiliated federations share a few bedrock practices. The first is women-led daily savings schemes organized at the street level, which build financial and social capacity within communities. Such a savings method allows these communities to engage with formal financial actors such as the State and banks to leverage further resources for development. Whereas

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the savings component of traditional microfinance is geared generally towards livelihood activities, the social and financial implications of SDI daily savings are much more political.¹¹ Another activity, known as “enumeration,” is the practice of community-led information gathering, which builds the capacity within poor communities to engage with formal actors, often the State, around planning and policy implementation in slum areas. This activity is, similarly, about bringing communities together around information in their own community to achieve political leverage.¹²

Social movements cover a wide range of forms and purposes. More traditional social movements, including those involved in liberation struggles, are fundamentally opposed to the State. They contest the State in the courts and in the streets. A liberation or revolution-oriented social movement, aims to overthrow the State. Other social movements are focused on resisting dispossession, and therefore mainly pursue challenges in the courts. These cases tend to demand that the State be the sole provider of solutions to socio-economic problems. Under such a framework, people’s movements may be effective tools for advocacy, but the poor remain passive constituencies waiting for services to be delivered from above.

SDI-affiliated groups move beyond such passivity. They seek out *partnership* with the State; however, this partnership is not to create pliant constituencies for government programs. Instead, these poor people’s movements serve to open up the institutions and resources of the State to participation and control by people themselves. It is a quintessentially bottom-up, reformist agenda. These people’s movements seek to “co-produce” delivery of services and implementation of socio-economic guarantees with the State.

Such a battle is not just in the streets, but also in the home, which is of course where it begins. Firstly, SDI federations organize with women at the center. They do this because they find that women are equipped to manage money, livelihoods, and family—in short, the home. As Rose Molokoane, a leader of South Africa’s Federation of the Urban Poor and an SDI coordinator, often says, “WOMEN stands for Well-Organized Men.”¹³ Secondly, in the communities in which SDI federations operate, the home’s informality itself is the fundamental challenge to the *status quo*. A poor person lives on a piece of land in a city and needs to find a solution for shelter. The upgrading of informal settlements and the livelihoods of slum dwellers begins with people taking action to erect an illegal shack. As SDI federations increasingly demonstrate, the capacities and methodologies for upgrading lie in the hands of those who have already begun creating their own solutions.

ALTERNATIVE METHODS IN ACTION: EXAMPLES FROM CAPE TOWN AND NAIROBI

Against the threat of eviction and demolitions, communities have organized around their own knowledge capacity to first face down the threat, and then to create the space for dialogue with government that leads to the upgrading of informal settlements in their current location (*in situ*) or else a truly negotiated

relocation. The case of the Joe Slovo community in the flats of Cape Town, South Africa, is a prime example. A legal battle that lasted several years succeeded in 2009 in staving off imminent eviction.¹⁴ Subsequently, sustained engagement with the State has only come about through the kind of community organizing measures used by SDI federations.¹⁵ For instance, early in 2010, the community completed an enumeration process, which surveyed every household on a wide range of social indicators.¹⁶ This process of information gathering has assisted significantly in organizing the community to be strong advocates for their own priorities as they negotiate with the Cape Town metropolitan municipal government on how to upgrade the settlement *in situ*.¹⁷ As a result of this engagement, a communal toilet block plan is now in the construction phase and many more residents are set to be accommodated in formal housing than the municipal government had initially planned.¹⁸ Elsewhere in Cape Town, a citywide Informal Settlement Network (“ISN”) is partnering with the metropolitan municipal government to pilot similar people-led informal settlement upgrades in at least ten settlements.¹⁹

A similar success story is unfolding in Nairobi, Kenya, where the parastatal Kenya Railways Corporation has long desired to evict many residents of the famous railway slums of Kibera and Mukuru.²⁰ The SDI-affiliated federation, *Muungano wa Wanavijiji* (the Kenyan Homeless People’s Federation), organized residents to count themselves in a massive household enumeration conducted around 2005.²¹ This enumeration convinced the railway company to delay the eviction.²² Then, SDI facilitated a learning exchange with an affiliate federation in Bombay, India, known as the National Slum Dwellers Federation.²³

The learning exchange illustrated the Indian federation’s successful approach to facing down a similar threat a decade earlier. In the 1990s, the Indian federation had enumerated tens of thousands of railway line slum dwellers.²⁴ This enumeration served as a community-driven tool for negotiating with government about both the pace and scale of relocation, as well as in planning for developments to accommodate those who would be displaced.²⁵ In Bombay, the community enumeration maps show the astounding history in vivid detail: who remained, who are waiting to enter permanent housing, and who are now living in housing developments that were designed and partly built by community members themselves.

After visiting the Bombay railway line through the SDI-facilitated learning exchange, the Kenya Railways Corporation agreed that a new enumeration should take place in the affected Nairobi communities and that it would serve as the basis for similar plans for relocation and *in situ* upgrading.²⁶ The new enumeration was completed earlier in 2010.²⁷ Now development plans are in negotiation with community members firmly seated at the negotiating table.²⁸ This is an excellent example of the “co-production” ethos. SDI federations are demonstrating variations on a theme: in the cities of the global South, there will be “nothing for us, without us.”

These methodologies are by no means exhaustive. SDI has a specific set of tools to facilitate processes that mitigate evictions and upscale inclusive processes for city planning and basic service delivery. Other organizations are also involved in supporting organized communities of the poor towards similar ends. Community-led programs have fundamentally altered government policy and practice on human settlements in places like Pakistan (Orangi Pilot Project)²⁹ and Thailand (Community Organizations Development Institute).³⁰ These initiatives focus on the co-management of finances and planning between organized communities and government institutions.

CONCLUSION

The challenge for civil society actors today is to support urban poor communities not just in their struggles to fight evictions; support must also be forthcoming for poor communities' efforts to build and redefine relationships with governments so as to change the very institutions that have long made forced evictions possible. This is a difficult task, fraught with potential contradictions, unavoidable setbacks, and certain disappointments. But through these processes, the people who populate the slums of cities like Nairobi and Bombay, Cape Town and Lagos, Rio de Janeiro and Cairo will escape their all-too-frequent status as victims. Governments and other formal actors make the poor into victims when they forcibly eject them from their homes and destroy their livelihoods. We all run the risk of victimizing the poor if we forget that their solutions, their local expertise, and

their capacity for survival and ingenuity will form the foundation of inclusive processes that realize human rights. It is their own potential that civil society professionals must work to amplify in order to change the troubling global picture for housing and human settlements in our cities.

The time has come to consider how the rights-based agenda has revealed its own limitations. It is time to consider how we can continue to articulate the rights framework in a way that maintains relevance to people's struggles. As the "co-production" methodology gains increasing acceptability and scale, we can think about socio-economic rights under a new rubric. There is now scope for conceiving and protecting overarching guarantees, such as the rights to dignity and participation, which are at the heart of "co-production."

Organized communities of the poor are demonstrating that socio-economic rights cannot be delivered without new understandings of the governance structures intended to guarantee these rights. State and non-State professional actors are therefore tasked with opening up the space for poor people to influence and alter these institutions. This means translating informal practice into formal language and bridging the gaps between informal and formal technical expertise. As we come to terms with our new urban age, we must grapple with the implications of the routes we take to make change in the world. In order to move beyond the limitations of socio-economic rights in theory, we are now tasked with supporting the developmental methodologies of the poor that turn these into practice.



Endnotes: Out of the Garden of Eden: Moving Beyond the Rights-Based Agenda in the Urban Sector

¹ UN HABITAT, STATE OF THE WORLD'S CITIES 2008/2009 – HARMONIOUS CITIES xii, 11 (2008), available at <http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2562&alt=1>.

² *Tackling Tenure Security in Slums through Participatory Enumerations*, GLOBAL LAND TOOL NETWORK BRIEF 1 (Mar. 1, 2010), available at <http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2992&alt=1>.

³ UN HABITAT, THE CHALLENGE OF THE SLUMS – GLOBAL REPORT ON HUMAN SETTLEMENTS 2003 xxvi, 11 (2003), available at <http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=1156>.

⁴ UN HABITAT, STATE OF THE WORLD'S CITIES 2008/2009 – HARMONIOUS CITIES, *supra* note 1, at xii, xiii.

⁵ See Mahbubur Rahman, *Sustainable Housing Trilogy*, THE DAILY STAR (London), Sep. 1, 2008, available at <http://www.stwr.org/health-education-shelter/sustainable-housing-trilogy.html>; Joe Nam, *Idle Urban Land Could Be Taxed*, NEW VISION (Uganda), Aug. 5, 2010, available at <http://www.newvision.co.ug/D/8/220/727892>; Press Release, Global Property Guide, Most Expensive Real Estate Markets in 2009 (Feb. 6, 2009), available at <http://www.global-propertyguide.com/press-relations/Most-expensive-real-estate-markets-in-2009>.

⁶ See, e.g., CENTER FOR HOUSING RIGHTS AND EVICTIONS, <http://www.cohre.org/> (last visited Oct. 17, 2010); SOCIO-ECONOMIC RIGHTS INSTITUTE IN SOUTH AFRICA, <http://www.seri-sa.org/> (last visited Oct. 17, 2010).

⁷ See, e.g., Gov't of the Republic of S. Afr. v. Grootboom 2000 (11) BCLR 1169. (CC) (S. Afr.) available at <http://www.saflii.org/za/cases/ZACC/2000/19.html>; Abahlali Basemjondolo Movement SA v. Premier of Kwazulu-Natal 2009 (3) SA 245 (D) (S. Afr.), available at <http://www.saflii.org/za/cases/ZAKZHC/2009/1.html>.

⁸ See, e.g., Nokotyana v. Ekurhuleni Metro. Municipality 2009 (4) BCLR 312 (CC) (S. Afr.), available at <http://www.saflii.org/za/cases/ZACC/2009/33.html> (compelling the municipality to provide a minimum of basic services to all informal settlements).

⁹ See, e.g., CENTER FOR HOUSING RIGHTS AND EVICTIONS, <http://www.cohre.org/> (last visited Oct. 17, 2010); SOCIO-ECONOMIC RIGHTS INSTITUTE IN SOUTH AFRICA, <http://www.seri-sa.org/> (last visited Oct. 17, 2010); HOUSING AND LAND RIGHTS NETWORK-MIDDLE EAST AND NORTH AFRICA, <http://www.hic-mena.org/pnews.asp> (last visited Oct. 2020).

¹⁰ *Savings, Shack/SLUM DWELLERS INTERNATIONAL*, <http://www.sdinnet.org/ritual/savings/> (last visited Oct. 14, 2010).

¹¹ *Id.*

¹² *Enumeration*, SLUM DWELLERS INTERNATIONAL, <http://www.sdinnet.org/ritual/enumerations/> (last visited Oct. 14, 2010).

¹³ *Habitat Agenda Partners Take Centre Stage at GC Dialogue*, UN HABITAT (Apr. 18, 2007), <http://www.unhabitat.org/content.asp?cid=4714&catid=364&typeid=6&subMenuId=0> (last visited Oct. 26, 2010).

¹⁴ *Residents of Joe Slovo Cmty., W. Cape v. Thubelisha* 2010 (3) SA 454 (CC) (S. Afr.), available at <http://www.saflii.org/cgi-bin/disp.pl?file=za/cases/ZACC/2009/16.html&query=joe slovo>.

¹⁵ Benjamin Bradlow, *SDI Bulletin: Beyond a Legal Framework for "Meaningful Engagement" in South Africa*, SHACK/SLUM DWELLERS INTERNATIONAL BLOG (Mar. 11, 2010), <http://blog.sdinnet.org/?p=83>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ ANDREA BONICK, COMMUNITY ORGANISATION RESOURCES CENTRE, FROM THE POLITICS OF PROTEST TO THE POLITICS OF REDRESS 3 (2009), available at http://www.sdinnet.org/static/upload/documents/Politics_of_Redress.pdf.

²⁰ Jack Makau, *Stops and Starts in Kibera*, SHACK/SLUM DWELLERS INTERNATIONAL, <http://www.sdinnet.org/news/31> (last visited Oct. 15, 2010).